

pursuant to Public Law 105-83, announces the appointment of the following individual to serve as a member of the National Council of the Arts: the Honorable CLAIRE MCCASKILL of Missouri.

ORDERS FOR THURSDAY, NOVEMBER 19, 2009

Ms. CANTWELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, November 19; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half; that following morning business, the Senate proceed to the consideration of Calendar No. 190, S. 1963, the Caregivers and Veterans Omnibus Health Services Act Of 2009, as provided for under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Ms. CANTWELL. Mr. President, at 2:30 p.m. tomorrow the Senate will proceed to a series of three rollcall votes. The votes will be on the confirmation of the nomination of David Hamilton to be a U.S. circuit judge for the Seventh Circuit; in relation to the Coburn amendment No. 2785, relating to spending priorities; and passage of S. 1963, the Caregivers and Veterans Omnibus Health Services Act, as amended, if amended.

Finally, I ask unanimous consent that following the remarks of Senator SESSIONS, Senator HARKIN, and Senator ALEXANDER, the Senate adjourn under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

NOMINATION OF DAVID HAMILTON

Mr. SESSIONS. Mr. President, I thank Senator CANTWELL. I appreciate her courtesy. I just want to share a few remarks tonight.

We are now postcloture on the nomination of Judge David Hamilton to the circuit court of appeals. Cloture is a procedure in the Senate generally used to end a prolonged debate. The majority leader, Senator REID, filed cloture on Judge Hamilton, however, before there had been even 1 hour of debate on the nomination. The cloture motion was filed before I or any of my col-

leagues had time set aside and had the opportunity to debate this matter.

Judge Hamilton's judicial philosophy and record as a district judge were problematic. There are important matters involved considering the fact that President Obama has nominated him to serve on the Court of Appeals for the Seventh Circuit. It is worthy of serious consideration, this lifetime appointment.

Yesterday, 28 Senators joined me in voting against cloture. I believe they voted no on cloture for a number of reasons. The first is the one I have just mentioned. Cloture is generally reserved to end a prolonged debate, and Senator REID filed cloture without any debate, before debate had really begun.

The second is that Judge Hamilton's judicial philosophy is outside the mainstream—I think well outside the mainstream. As I have said before, if a judge is not committed to following the law whether they like it or not, then that person is not qualified to be a judge. They may be a good advocate, but a judge must, by definition, be impartial.

I think there will be more people voting against Judge Hamilton's nomination than voted against cloture—the 29 who voted yesterday. I think we need to spend some time talking about his record and his judicial philosophy.

I do not have anything against Judge Hamilton. I understand he may be a fine person, and I really mean that. But there is afoot in this country a philosophy of judging, an approach to law that I think is dangerous and strikes at the very heart of the classical American judicial philosophy and legal system that has served us so well. So that is what this is about. If judges have the wrong philosophy as they approach the bench about how they should go about deciding cases, then that can disqualify them.

As Senators, we each have a right to express our opinion on whether we believe a nominee is qualified and should be confirmed or not elevated to a higher court, but the American people expect we will not misrepresent the facts. Let's be fair to this nominee, and let's not in any way misrepresent who he is and what he did and what his philosophy is. I intend to be fair to him. I think any nominee is entitled to that. Even though I might be a critic, I should not be inaccurate in what I say.

In this case, I think the facts have been misrepresented by others, and I want to correct the record on some of the issues, where it has been suggested that I or others have been incorrect or unfair in our criticism. Accuracy goes both ways. If you are for a judge and want to move him forward, OK, let's be accurate. Those who are opposed to him, you must be restrained and accurate also.

Yesterday on the floor of the Senate, the majority leader, Senator REID, invoked the Golden Rule. He said that when he became majority leader, he sought to "treat [President Bush's] ju-

dicial nominees the way they would want them treated if the roles were reversed."

Let's take a look at the way President Bush's judicial nominees were treated by the Democratic majority. Senator REID complained that Judge Hamilton, the judge before us tonight—tomorrow—waited 166 days for this vote. If Republicans followed Senator REID's version of the Golden Rule, would he have been confirmed earlier? No. Judge Hamilton would have waited at least another year and a half before he received consideration on the Senate floor. That is exactly how President Bush's nominees were treated for the first group of nominees he submitted to the circuit courts.

Priscilla Owen, a fabulous judge at the Supreme Court of Texas, John Roberts, now on the Supreme Court of the United States, and Deborah Cook all waited 2 years before receiving a confirmation vote.

Yesterday Senator REID said:

It's really unfortunate we have to file cloture on a judge.

Really unfortunate that we have to file cloture on a judge? As if this was something that had never been done before. Indeed, during the Bush administration, cloture had to be filed on at least 17 different judicial nominees because Senator REID was leading filibusters himself. The majority leader complains he could not get a time agreement. But he never offered a reasonable amount of time. I believe there were discussions about 30 hours of debate, which was rejected. Senator REID said he was stunned that some people believed there was not enough time to debate the nomination when no debate had been had.

He accused Republicans of not entering into a time agreement. But as I said Monday, Senator REID has a short memory. When Senator REID was in the middle of filibustering Priscilla Owen, Senator BENNETT made a unanimous consent request that the Senate spend 10 hours more debating the nomination and then vote. Senator REID objected. When Senator BENNETT asked how much time would be sufficient to debate the Priscilla Owen nomination, Senator REID responded by saying:

[T]here is not a number of [hours] in the universe that would be sufficient.

Later Senator MCCONNELL sought a time agreement on Judge Owen. Senator REID responded by saying:

We would not agree to a time agreement . . . of any duration.

Yesterday Senator REID said:

The Democratic majority in the Senate confirmed three times as many nominees [under President Bush] as we have been able to confirm in the same amount of time under President Obama.

Senator REID left out the fact that Democrats filibustered more than three times as many nominees under President Bush. Indeed, there were 30 cloture votes on 17 different judicial nominations during the Bush administration. There were 1,044 total votes